

Thomas H. Bienert, Jr. (CA 135311, admitted *pro hac vice*)
Whitney Z. Bernstein (CA 304917, admitted *pro hac vice*)
BIENERT | KATZMAN PC
903 Calle Amanecer, Suite 350
San Clemente, California 92673
Telephone: (949) 369-3700
Facsimile: (949)369-3701
tbienert@bienertkatzman.com
wbernstein@bienartkatzman.com
Counsel for James Larkin

Paul J. Cambria, Jr. (NY 1430909, admitted *pro hac vice*)
Erin E. McCampbell (NY 4480166, admitted *pro hac vice*)
LIPSITZ GREEN SCIME CAMBRIA LLP
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
Telephone: (716) 849-1333
Facsimile: (716) 855-1580
pcambria@lglaw.com
emccampbell@lglaw.com
Counsel for Michael Lacey

Additional attorneys listed on next page

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Michael Lacey, *et al.*,

Defendants.

NO. CR-18-00422-PHX-SMB

**DEFENDANTS' PUBLICLY FILED
OPPOSITION TO CARL FERRER'S
MOTION TO QUASH SUBPOENA
(DOC. 739)**

(Oral argument requested)

1 Bruce Feder (AZ Bar No. 004832)
2 FEDER LAW OFFICE, P.A.
3 2930 E. Camelback Road, Suite 160
4 Phoenix, Arizona 85016
5 Telephone: (602) 257-0135
6 bf@federlawpa.com
7 *Counsel for Scott Spear*

8 Gary S. Lincenberg (CA State Bar No. 123058, admitted *pro hac vice*)
9 Ariel A. Neuman (CA State Bar No. 241594, admitted *pro hac vice*)
10 Gopi K. Panchapakesan (CA State Bar No. 279586, admitted *pro hac vice*)
11 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
12 DROOKS, LINCENBERG & RHOW, P.C.
13 1875 Century Park East, 23rd Floor
14 Los Angeles, California 90067-2561
15 Telephone: (310) 201-2100
16 Facsimile: (310) 201-2110
17 glincenberg@birdmarella.com
18 aneuman@birdmarella.com
19 gpanchapakesan@birdmarella.com
20 *Counsel for John Brunst*

21 David Eisenberg (AZ Bar No. 017218)
22 DAVID EISENBERG PLC
23 3550 N. Central Ave., Ste. 1155
24 Phoenix, Arizona 85012
25 Telephone: (602) 237-5076
26 Facsimile: (602) 314-6273
27 david@deisenbergplc.com
28 *Counsel for Andrew Padilla*

Joy Malby Bertrand (AZ Bar No. 024181)
JOY BERTRAND ESQ LLC
P.O. Box 2734
Scottsdale, Arizona 85252
Telephone: (602) 374-5321
Facsimile: (480) 361-4694
joy.bertrand@gmail.com
Counsel for Joye Vaught

TABLE OF CONTENTS

Background.....1

I. Procedural History.....1

II. Ferrer has provided information to the government
about many of the issues raised in Defendants’ Motion to Compel.....3

III. Ferrer has expressly waived his Fifth Amendment rights.....6

Argument7

I. Compliance with the Subpoena is neither unreasonable nor oppressive.....8

II. Ferrer’s selective invocation of the Fifth Amendment should
not preclude his material and relevant testimony at the hearing.....9

III. Service of a new subpoena in compliance with Rule 17(d)
supports denial of the Motion.....11

Conclusion.....12

1 Defendants James Larkin, Michael Lacey, John Brunst, Scott Spear, Andrew Padilla, and Joye
2 Vaught, by and through their undersigned attorneys, hereby publicly file the instant opposition to Carl
3 Ferrer's Motion to Quash Subpoena Served by Defendant James Larkin ("Motion") (Doc. 739). This
4 motion refers to Ferrer's under seal plea agreements in California, Texas, and Arizona, and various
5 memorandums of interviews that are protected by Docs. 730 and 731. Accordingly, this publicly filed
6 version is redacted; the unredacted motion was filed under seal at Docs. 748 and 749.

7 Ferrer's testimony at October 3, 2019's evidentiary hearing will address issues central to this
8 Court's resolution of Defendants' First Motion to Compel Discovery on Behalf of All Defendants
9 ("Motion to Compel") (Doc. 643), and he has failed to provide any legitimate grounds for the Court
10 to grant his Motion. Consequently, this Court should deny the Motion.

11 BACKGROUND

12 I. Procedural History

13 On June 19, 2019, Defendants filed their Motion to Compel, asserting that as a matter of due
14 process, Defendants must have access to the data in the I.T. systems that operated the website
15 www.backpage.com with the same functionality and in the same condition and configuration as
16 existed at the time the government seized those systems. Before the government seized the Backpage
17 I.T. systems, the systems could, for example, readily produce copies of particular ads and all other ads
18 posted by the same user (with pertinent background and administrative information, including
19 information on Backpage's actual practices in screening, blocking, removing, and reporting ads), as
20 well as a wealth of statistical data regarding the number of ads posted to the website, blocked from
21 the website, and the like. Defendants explained that, in past civil litigation, they were able to disprove
22 allegations concerning particular ads by using the functionality in the I.T. systems to search for and
23 produce accurate records related to those.

24 Now, when the stakes are much higher, the government has seized the I.T. systems and left
25 Defendants without the ability to use the functionality of the systems to locate information to defend
26 the instant charges. Instead, the government has disclosed just some of the data from the I.T. systems,
27 but in a static, imaged manner that has none of the functionality of the systems before seizure and in
28 a format that is not readily usable. Indeed, the data was disclosed in a manner that was akin to the

1 government shredding a document, providing a defendant with the shreds, and claiming that it
2 had fulfilled its discovery obligations with respect to that document because some of the data in the
3 original document was contained in the shreds. The data that has been produced to date is useless.
4 *See* Declaration of Tami Loehrs, Exhibit A of Defendants' Reply In Support of Motion to Compel (Doc.
5 717-1). However, the data from the I.T. systems existed in its original relational and functional capacity
6 prior to the government's seizure, the government could have undertaken measures to preserve the
7 data in that capacity, it appears that the government failed to undertake even the most rudimentary
8 preservation measures, the data is not currently available to Defendants in a reasonably usable form,
9 and Defendants' ability to access any data from those systems has been massively degraded—if not
10 eliminated.

11 The government opposed Defendants' Motion to Compel, claiming that the government had
12 disclosed the data from the I.T. systems to Defendants in the manner in which the government
13 received it, that the data is "usable" in the format produced, and that the government is required to
14 do no more. (*See* Doc. 696.)

15 On September 13, 2019, the parties appeared for argument on the Motion to Compel. In light
16 of the parties' disagreement concerning whether the government had produced the data in the same
17 form in which it first obtained it and whether the data produced was in a reasonably usable form, this
18 Court ordered the parties to appear for an evidentiary hearing on October 3, 2019 to present witness
19 testimony. Among other issues, Defendants intend to question witnesses on the state of the Backpage
20 I.T. systems before the government's seizures, the information that was available from those systems
21 before and after the government's seizures, and the nature of the data disclosed by the government to
22 the Defendants.

23 On September 17, 2019, Defendant James Larkin served a subpoena on Carl Ferrer, the
24 government's lead witness in this case, who was the former Chief Executive Officer of Backpage,
25 seeking his appearance and testimony at the hearing ("Subpoena"). On September 18, 2019, counsel
26 for Ferrer indicated that, if compelled to attend, Ferrer would invoke his Fifth Amendment rights to
27 every question concerning his involvement with Backpage. On September 23, 2019, Ferrer filed the
28 instant Motion, seeking an order from this Court quashing the Subpoena. (*See* Doc. 739.)

1 In an effort to resolve the issue of Ferrer's appearance without motion practice, counsel for
 2 Mr. Larkin contacted the government, reminded the government that Ferrer's plea agreements require
 3 him to attend all necessary hearings, and requested that the government make him available at the
 4 hearing. (*See* Exhibit A, Sept. 24, 2019 email from W. Bernstein to K. Rapp.) The government refused
 5 without explanation.

6
 7 **II. Ferrer has provided information to the government about many of the issues raised in Defendants' Motion to Compel.**

8 Ferrer is in a unique position to provide testimony about the Backpage I.T. systems that is
 9 relevant and material to this Court's resolution of the Defendants' Motion to Compel. Ferrer is very
 10 knowledgeable about the data maintained by those systems and the capabilities of the systems to
 11 search for and aggregate data. Notably, Ferrer repeatedly provided information relevant and material
 12 to this hearing to the government during his proffer sessions. His repeated admissions undermine
 13 any claim that Defendants are on a "fishing expedition." Instead, they seek limited testimony about
 14 the functionality of the systems that Ferrer has already discussed with the government. For example,
 15 in a summary of his [REDACTED] proffer session, [REDACTED]
 16 [REDACTED] Ferrer knew and told the government:

- 17 • [REDACTED]
 18 [REDACTED] (*See* Exhibit B [REDACTED])

- 19 • [REDACTED]
 20 [REDACTED]

21 Subsequently, during [REDACTED] proffer session with the government, Ferrer knew and
 22 told the government:

- 23 • [REDACTED]
 24 [REDACTED] (*See* Exhibit C [REDACTED])

- 25 • [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

- [REDACTED]

During [REDACTED] proffer session with the government, Ferrer knew and told the government:

- [REDACTED] (See Exhibit D [REDACTED])
- [REDACTED]
- [REDACTED]

At another proffer session with the government [REDACTED], Ferrer knew and told the government:

- [REDACTED] (See Exhibit E [REDACTED])
- [REDACTED]

Subsequently, during [REDACTED] proffer session with the government, Ferrer knew and told the government:

- [REDACTED] (See Exhibit F [REDACTED])
- [REDACTED]
- [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

Then, at [REDACTED] proffer session with the government, Ferrer knew and told the government that he could respond to a request from law enforcement and provide law enforcement with “records related to ads” for specific site users within hours of such a request. (*See* Exhibit G [REDACTED] Critically, running searches for “records related to ads” is one of the things Defendants need to be able to do—but cannot given the current state of the data. On that same date, Ferrer also knew and told the government:

• [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

• [REDACTED]

In addition to those statements, as a condition of his plea in the related case [REDACTED]

[REDACTED], Ferrer agreed to [REDACTED]

(*See* Exhibit H [REDACTED])

Based on this admission, there can be no one in a better position than Ferrer to tell this Court about the state of the servers at the time the government seized them.

1 Similarly, in the plea agreement he reached with [REDACTED]

2 [REDACTED] in the case captioned [REDACTED], Ferrer agreed to [REDACTED]

3 [REDACTED] (See Exhibit I, [REDACTED])

4 [REDACTED] Defendants believe that this transactional data includes the type of data that would result from
5 searches conducted by Ferrer (or other individuals at his direction) in response to subpoena requests
6 from law enforcement, ads reported to NCMEC, and responses directed by Ferrer in the course of
7 prior civil litigation, such as the attached declarations. (See Exhibit J, [REDACTED])

8 [REDACTED];
9 Exhibit K, [REDACTED]

10 [REDACTED]; Exhibit L, [REDACTED]

11 [REDACTED].) As those declarations demonstrate, Ferrer
12 regularly provided sworn statements about the servers and the data that he was (or others at his
13 direction were) able to produce based on conducting searches of the I.T. systems, when they were
14 functional. (See *id.*)

15 By virtue of his statements made during proffer sessions, pleas, and declarations, Ferrer has
16 indicated that he has knowledge that is relevant and material to the issues before this Court at the
17 October 3, 2019 evidentiary hearing concerning the functionality of the servers prior to the
18 government's seizures and the process by which the government "shut down" Backpage.

19 **III. Ferrer has expressly waived his Fifth Amendment rights.**

20 In addition to providing the government with inculpatory information during his numerous
21 proffer sessions and thereby waiving his Fifth Amendment rights, Ferrer has expressly agreed to waive
22 his Fifth Amendment rights and to testify at any proceedings prior to his sentencing before this Court
23 as part of his three guilty pleas. For example, in the plea agreement he reached with [REDACTED]

24 in the case captioned [REDACTED], Ferrer agreed to [REDACTED]

25 [REDACTED]
26 [REDACTED]
27 [REDACTED] (See Exhibit
28 M [REDACTED]

1 Further, in his written plea agreement with [REDACTED]
 2 [REDACTED], in the case captioned [REDACTED], Ferrer agreed [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] (Exh. I [REDACTED]
 7 Finally, in the plea agreement in the related case [REDACTED], Ferrer
 8 expressly agreed to [REDACTED]
 9 [REDACTED] (See Exh. H [REDACTED] Additionally, that agreement
 10 contemplates that [REDACTED], and the
 11 government has included him on their witness list for the trial in this case.

12 Having agreed to waive his Fifth Amendment rights in three separate plea agreements,
 13 agreeing to testify at any proceedings in his state cases or any proceedings in any federal court prior to
 14 his sentencing in this matter, and having actually waived his rights by meeting with the government
 15 for numerous proffer sessions, he now seeks to selectively invoke the privilege to Defendants'
 16 detriment. This selective waiver is even more troubling because the government has identified Ferrer
 17 as one of its trial witnesses (and Ferrer's counsel identifies him in the motion to quash as "the
 18 government's key witness against" Defendants) (Doc. 739 at 3), meaning that he will provide
 19 testimony in this case even though he previously claimed that he could not do so, and even though he
 20 has agreed to provide testimony in any pretrial proceedings in this case, any other federal case, and the
 21 Texas and California cases, all before *sentencing*, the very basis which he now claims legitimizes his Fifth
 22 Amendment challenge to compliance with the Subpoena.

23 ARGUMENT

24 This Court should deny the Motion. Ferrer has failed to provide any valid justification for
 25 quashing the Subpoena. Compliance with the Subpoena is neither unreasonable nor oppressive
 26 because Ferrer has knowledge that is relevant and material to the issues before this Court at this
 27 hearing. Moreover, his selective invocation of his Fifth Amendment rights should not be condoned,
 28

1 particularly when his invocation deprives Defendants of the ability to present information about a
2 matter tangential to the crimes charged. Ferrer has been identified as a witness who will testify for the
3 government at trial, by the government and by his counsel in the Motion, all before sentencing, which
4 entirely undermine the basis he claims supports his invocation of the Fifth Amendment now.

5 **I. Compliance with the Subpoena is neither unreasonable nor oppressive.**

6 This Court should deny the Motion. Under Rule 17 of the Federal Rules of Criminal
7 Procedure (“Rule 17”), this Court should only grant a motion to quash a subpoena when compliance
8 would be “unreasonable or oppressive.” Fed. R. Crim. P. 17(c)(2). Courts must conduct a “case-by-
9 case-inquiry” as to whether a subpoena seeking testimony from a witness is unreasonable or
10 oppressive, and, as such, “there can be no absolute rule” which “enable[s] an escape from case-by-
11 case judgment.” See *United States v. Bergeson*, 425 F.3d 1221, 1226 (9th Cir. 2005) (recognizing that the
12 standard for reviewing motions to quash subpoenas seeking documents—whether compliance is
13 “unreasonable or oppressive”—is the same as that for subpoenas seeking documents).

14 Courts have routinely denied motions to quash where the movant fails to meet its burden
15 of showing that a subpoena is unreasonable and oppressive. See *In Re Grand Jury Subpoenas*, 438
16 F. Supp. 2d 1111, 1121 (N.D. Cal. 2006) (denying motion to quash subpoena notwithstanding
17 movant’s assertion of the First Amendment and concerns about maintaining relationships with
18 confidential news sources); *United States v. Camez*, 2013 WL 6158402, at *2-3 (D. Nev. 2013)
19 (denying motion to quash government subpoena to non-party custodian of records even though
20 custodian provided a certificate of authentication for the records at issue).

21 This Court should reject Ferrer’s claim that compliance with the subpoena would be
22 unreasonable and oppressive. (See Mot. at 6-8.) The sole basis for this claim is “Ferrer’s lack of
23 knowledge about the subject of the hearing.” (*Id.* at 6.) Ferrer narrowly defines the issue to be
24 resolved at the hearing as a “highly technical” issue pertaining to a discovery dispute between
25 the government and the Defendants concerning the government’s production of “imaged” data.
26 (*Id.* at 7.) Ferrer is wrong on both his characterization of the issue before this Court and his
27 claimed lack of knowledge.

1 First, Defendants seek Ferrer's testimony about the data maintained in, and the reporting
 2 capabilities of, Backpage's I.T. systems before they were seized by the government. Defendants
 3 do not intend to ask Ferrer about the government's subsequent method of disclosure of data
 4 from the servers to Defendants or the technical intricacies of how the systems worked. Nor do
 5 Defendants intend to ask Ferrer about his communications with his attorneys. Under these
 6 circumstances, this Court should disregard Ferrer's attempt to claim lack of knowledge by
 7 mischaracterizing the issue before this Court. *See Camez*, 2013 WL 6158402, at *2-3 (denying
 8 motion to quash and ignoring movant's mischaracterization of the issue before the court).

9 Second, when the issue of Ferrer's testimony is properly defined, it is clear that Ferrer
 10 has knowledge that is both relevant and material to resolution of the Defendants' Motion to
 11 Compel. Ferrer also repeatedly provided the government with information about the I.T.
 12 systems, including their operation, capabilities, and data stored in them. (*See above* Background
 13 Point II (discussing Ferrer's proffer memos).) Indeed, there is **no one** in a better position to
 14 tell this Court about the state of the servers at the time of the government's seizure than the
 15 person who pledged to assist the government to "immediately shut down" the Backpage
 16 website.

17
 18 **II. Ferrer's selective invocation of the Fifth Amendment should not preclude his
 material and relevant testimony at the hearing.**

19 This Court should disregard Ferrer's selective invocation of the Fifth Amendment. By
 20 virtue of his three plea agreements, which satisfied all charges, he expressly agreed to waive his
 21 right to invoke the Fifth Amendment and agreed to appear and provide testimony at *any*
 22 *proceeding in any federal case* regardless of whether he had been sentenced in his cases, the very
 23 basis that he now claims legitimizes his Fifth Amendment claim. (*See above*, Background III.)
 24 He then met with the government on numerous occasions, providing the government with
 25 inculpatory information. Moreover, the government has identified him as one of their trial
 26 witnesses (and his counsel has confirmed that he expects to testify at trial), meaning that he will
 27 testify at trial against the Defendants before he is sentenced, the very basis for his invocation.
 28

1 Critically, it should be no surprise to Ferrer that his testimony is needed at a proceeding
2 prior to his sentencing, because he specifically agreed to provide such testimony as a condition
3 of his plea agreements. It would be fundamentally unfair to allow Ferrer to testify at the trial,
4 but not at this pre-trial proceeding on an issue for which he has material and relevant
5 information, particularly because the issue is tangential to the crimes charged and is unlikely to
6 result in questioning of any kind that could implicate Ferrer in further wrongdoing beyond that
7 to which he has already pleaded guilty three times. The government has the ability to order him
8 to appear at any proceeding at any time, but the government has refused to do so for this hearing
9 (*see* Exh. A), likely because he has stated on numerous times that he has information that is
10 patently detrimental to the government's claim that they did not mishandle the electronically
11 stored information in the Backpage I.T. systems. The government's blatant gamesmanship—
12 the hiding of their key witness when it suits their purposes—should not be condoned.

13 The cases upon which Ferrer relies are readily distinguishable. For example, in *United*
14 *States v. Berberian*, 767 F.2d 1324 (9th Cir. 1985), the government served a subpoena on a co-
15 defendant, commanding him to appear at the severed trial of his co-defendant, to repeat
16 testimony that he had given during a suppression hearing, which implicated both co-defendants
17 in the crime charged. *See id.* at 1325. The recipient of the subpoena was being asked to testify
18 about the crimes charged, and had not waived his Fifth Amendment privilege on *any* occasion
19 (let alone three times), nor had he agreed to provide testimony prior to sentencing. The Court's
20 determination that his Fifth Amendment rights remained intact despite his testimony at a
21 suppression hearing has no implication here for Ferrer's attempts to resurrect his long-ago
22 waived Fifth Amendment privilege. Indeed, the Court was concerned with the possibility of
23 state liability arising from the subpoena recipient's compelled testimony at the co-defendant's
24 trial. *See id.* at 1326. There is no such concern here. Defendants seek testimony on an issue
25 that is tangential to the crimes charged—the state of the Backpage I.T. systems at the time the
26 government seized them, the data contained in those systems, and the ability of the systems to
27 search for and report on that data when the systems were functional (to allow comparison to
28 the data the government has produced to Defendants), none of which touches upon the crimes

1 charged. Indeed, as Ferrer describes his anticipated testimony, he would be providing nothing
 2 more than information related to a “discovery dispute between the government and
 3 Defendants” (Mot. at 7), which is a far cry from the admission of guilt sought by the prosecutors
 4 in the *Berberian* case, and in sharp contrast to Ferrer who has already pleaded guilty three times.

5 Similarly, in *United States v. Trejo-Zambrano*, 582 F.2d 460 (9th Cir. 1978), the subpoena
 6 recipient had not signed a written plea agreement waiving his Fifth Amendment rights nor
 7 agreed to testify at any proceeding in any federal court prior to his sentencing (let alone three
 8 such agreements as we have here).

9 Finally, the blanket refusal to answer questions that Ferrer seeks improperly broadens
 10 the scope of the Fifth Amendment privilege, where, in this context, the anticipated testimony is
 11 limited to the state of the equipment Ferrer used (and directed others to use) in the course of
 12 his business. As the Ninth Circuit has explained, it is error for a court to allow a blanket refusal
 13 to provide testimony. Instead, proper invocation “requires that the Fifth Amendment claim be
 14 raised in response to specific questions propounded This permits the reviewing court to
 15 determine whether a responsive answer *might lead* to injurious disclosures. Thus a blanket refusal
 16 to answer any question is unacceptable.” *United States v. Moore*, 682 F.2d 853, 856 (9th Cir. 1982)
 17 (concluding that the district court erred when it accepted the witness’s blanket refusal to testify).
 18 Indeed, this approach is appropriate because “a reviewing court cannot possibly anticipate every
 19 question that might be asked and conclude that each would present a distinct possibility of self-
 20 incrimination if answered.” *Id.* at 856 n.1 (quotations omitted). Here, because Defendants seek
 21 limited testimony from Ferrer about an issue tangential to the crimes charged which will not
 22 lead to “injurious disclosures,” this Court should order Ferrer to appear and to testify.

23 **III. Service of a new subpoena in compliance with Rule 17(d) supports denial of the** 24 **Motion.**

25 Mr. Larkin’s counsel wrote to Ferrer’s counsel to establish that she would accept service
 26 of the Subpoena on Ferrer’s behalf. Arrangement of witness and travel fees was to follow.
 27 Regardless, Defendants have since sought a subpoena for Ferrer that includes the required
 28 witness-attendance fees and legal mileage allowances and anticipate service of all on Monday,

September 30, 2019. Consequently, this Court should deny the Motion because this technical challenge to the original Subpoena will be moot.

CONCLUSION

For all the reasons set forth above, Defendants respectfully request that this Court deny the Motion in its entirety.

RESPECTFULLY SUBMITTED this 27th day of September, 2019,

BIENERT | KATZMAN PC

s/ Whitney Z. Bernstein

Whitney Z. Bernstein

Thomas H. Bienert, Jr.

Attorneys for James Larkin

LIPSITZ GREEN SCIME CAMBRIA LLP

s/ Paul J. Cambria, Jr.

Paul J. Cambria, Jr.

Erin McCampbell Paris

Attorneys for Michael Lacey

BIRD MARELLA BOXER WOLPERT NESSIM

DROOKS LINCENBERG AND RHOW

s/ Ariel A. Neuman

Gary S. Lincenberg

Ariel A. Neuman

Gopi K. Panchapakesan

Attorneys for John Brunst

FEDER LAW OFFICE, P.A.

s/ Bruce Feder

Bruce Feder

Attorneys for Scott Spear

DAVID EISENBERG PLC

s/ David Eisenberg

David Eisenberg

Attorneys for Andrew Padilla

JOY BERTRAND ESQ LLC

s/ Joy Bertrand

Joy Bertrand

Attorneys for Joye Vaught

1 On September 27, 2019, a PDF version
2 of this document was filed with
3 Clerk of the Court using the CM/ECF
4 System for filing and for Transmittal
5 Of a Notice of Electronic Filing to the
6 Following CM/ECF registrants:

7 Kevin Rapp, kevin.rapp@usdoj.gov
8 Reginald Jones, reginald.jones4@usdoj.gov
9 Peter Kozinets, peter.kozinets@usdoj.gov
10 John Kucera, john.kucera@usdoj.gov
11 Margaret Perlmeter, margaret.perlmeter@usdoj.gov
12 Andrew Stone, andrew.stone@usdoj.gov
13 Nanci Clarence, nclarence@clarencedyer.com
14 Jonathan Baum, jbaum@clarencedyer.com
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Index of Exhibits

EXH	DESCRIPTION
A	Email chain with counsel dated September 24, 2019
B	[REDACTED]
C	[REDACTED]
D	[REDACTED]
E	[REDACTED]
F	[REDACTED]
G	[REDACTED]
H	[REDACTED]
I	[REDACTED]
J	[REDACTED]
K	[REDACTED]
L	[REDACTED]
M	[REDACTED]

Exhibit A

Paul Cambria

From: Whitney Bernstein <wbernstein@bienertkatzman.com>
Sent: Tuesday, September 24, 2019 2:18 PM
To: Thomas H. Bienert; Toni Thomas; Paul Cambria; Erin McCampbell Paris; Bruce Feder; Feder Law; Ariel A. Neuman; Gary S. Lincenberg; Gopi K. Panchapakesan; David Eisenberg; Joy Bertrand; Robert Corn-Revere; Grant, James; Daniel J. Quigley
Subject: FW: Carl Allen Ferrer; Oct. 3 Hearing in US v. Lacey, et al., 18-CR-00422-PHX-SMB

Rapp respectfully declines.

Whitney Z. Bernstein | Attorney
Bienert | Katzman PC
Tel: (949) 369-3700
www.bienertkatzman.com

From: Rapp, Kevin (USAAZ) <Kevin.Rapp@usdoj.gov>
Sent: Tuesday, September 24, 2019 11:16 AM
To: Whitney Bernstein <wbernstein@bienertkatzman.com>; Stone, Andrew (USAAZ) <Andrew.Stone@usdoj.gov>; Jones, Reginald (CRM) <Reginald.Jones4@usdoj.gov>; Perlmeter, Margaret (USAAZ) <Margaret.Permeter@usdoj.gov>; Kozinets, Peter (USAAZ) <Peter.Kozinets@usdoj.gov>; Kucera, John (USACAC) <John.Kucera@usdoj.gov>
Subject: RE: Carl Allen Ferrer; Oct. 3 Hearing in US v. Lacey, et al., 18-CR-00422-PHX-SMB

Whitney:

We respectfully decline your request.

Best,

Kevin M. Rapp | Assistant U.S. Attorney
Financial Crimes and Public Integrity Section
U.S. Department of Justice | Office of the United States Attorney
40 N. Central Ave., Ste. 1800, Phoenix, AZ 85004
602.514.7609, kevin.rapp@usdoj.gov

From: Whitney Bernstein <wbernstein@bienertkatzman.com>
Sent: Tuesday, September 24, 2019 11:08 AM
To: Rapp, Kevin (USAAZ) <KRapp@usa.doi.gov>; Stone, Andrew (USAAZ) <AStone1@usa.doi.gov>; Jones, Reginald (CRM) <Reginald.Jones@CRM.USDOJ.GOV>; Perlmeter, Margaret (USAAZ) <MPermeter@usa.doi.gov>; Kozinets, Peter (USAAZ) <PKozinets@usa.doi.gov>; Kucera, John (USACAC) <jkucera@usa.doi.gov>
Cc: Thomas H. Bienert <tbienert@bienertkatzman.com>; Toni Thomas <tthomas@bienertkatzman.com>; Paul Cambria <pcambria@lglaw.com>; Erin McCampbell Paris <emccampbell@lglaw.com>; Robert Corn-Revere <bobcornrevere@dwt.com>; Grant, James <jimgrant@dwt.com>; Bruce Feder <bf@federlawpa.com>; Feder Law <fl@federlawpa.com>; Gary S. Lincenberg <glincenberg@birdmarella.com>; Ariel A. Neuman <aneuman@birdmarella.com>; Gopi K. Panchapakesan <gkp@birdmarella.com>; David Eisenberg

<david@deisenbergplc.com>; Joy Bertrand <joy.bertrand@gmail.com>

Subject: Carl Allen Ferrer; Oct. 3 Hearing in US v. Lacey, et al., 18-CR-00422-PHX-SMB

Counsel:

We are writing to request that you produce Carl Allen Ferrer at the evidentiary hearing scheduled for 9am on October 3, 2019 before Judge Brnovich in US v. Lacey, et al., 18-CR-00422-PHX-SMB.

We note that over the past 17 months, Ferrer has been interviewed repeatedly by the government and provided information regarding the configuration and capabilities of the functioning Backpage.com systems, servers, and databases. Ferrer's various plea agreements (with the state of Texas, the state of California, and the DOJ) provide for Ferrer to cooperate with the government regarding the shutdown of Backpage.com. This information is the subject of next week's evidentiary hearing.

We also note that pursuant to Ferrer's various plea agreements, he is compelled to appear and provide testimony when directed to by the government (e.g., Ferrer Texas Plea Bargain at ¶ 2 ("I, Carl Ferrer, will give full, complete, and truthful evidence concerning my knowledge of any and all offenses committed by any and all co-defendants identified by Texas, California, or federal authorities. **This agreement includes testimony during trial, pre-trial, post-conviction, appellate and re-trial proceedings in any Court, state or federal.**") (emphasis added)). Though we served a subpoena on Ferrer, his counsel has indicated that he intends to invoke in response to all questions and has filed a motion to quash (see Dkt. 739).

Accordingly, we ask to make Ferrer available for next week's hearing and obviate the need for court intervention on this issue. Please confirm that you will do so by close of business on 9/25/19 so that have time to bring this to the Court's attention if you require us to do so.

Thank you,

Whitney

Whitney Z. Bernstein

Attorney

Bienert | Katzman PC

Los Angeles | 601 W. 5th Street, Suite 720 | Los Angeles, CA 90071 | (213) 528-3400

Orange County | 903 Calle Amanecer, Suite 350 | San Clemente, CA 92673 | (949) 369-3700

Website: www.bienertkatzman.com



Bienert | Katzman PC
LOS ANGELES ♦ ORANGE COUNTY

The foregoing message is confidential and intended for the designated recipient only. The foregoing information may be protected by attorney-client and/or work product privileges. Accordingly, if you have received this message in error, please contact BIENERT | KATZMAN PC immediately, and delete the message without reviewing, copying, or making further use of the information contained herein.

EXHIBIT B

(FILED UNDER SEAL)

EXHIBIT C

(FILED UNDER SEAL)

EXHIBIT D

(FILED UNDER SEAL)

EXHIBIT E

(FILED UNDER SEAL)

EXHIBIT F

(FILED UNDER SEAL)

EXHIBIT G

(FILED UNDER SEAL)

EXHIBIT H

(FILED UNDER SEAL)

EXHIBIT I

(FILED UNDER SEAL)

EXHIBIT J

(FILED UNDER SEAL)

EXHIBIT K

(FILED UNDER SEAL)

EXHIBIT L

(FILED UNDER SEAL)

EXHIBIT M

(FILED UNDER SEAL)